

Rule 3, Ariz. R. Crim. P.

Fourth Amendment text.....Revised 12/2009

The Fourth Amendment to the United States Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The protections of the Fourth Amendment apply to the States through the due process clause of the Fourteenth Amendment. See *Mapp v. Ohio*, 367 U.S. 643, 654 - 55 (1961); *State v. Davolt*, 207 Ariz. 191, 201, ¶ 23, 84 P.3d 456, 466 (2004). “The Fourth Amendment to the United States Constitution, made applicable to the States through the Due Process Clause of the Fourteenth Amendment, protects against ‘unreasonable searches and seizures,’ and provides that search warrants shall be issued only upon ‘probable cause.’” *State v. Dean*, 206 Ariz. 158, 161, ¶ 8, 76 P.3d 429, 432 (2003).

For a search to be legal in Arizona, it must comply not only with the Fourth Amendment but also with the Arizona Constitution, which provides greater privacy rights in a person’s home than those afforded by the Fourth Amendment. *State v. Bolt*, 142 Ariz. 260, 264-65, 689 P.2d 519, 523-24 (1984). Arizona’s constitutional provision on the right to privacy, Article 2, § 8, states:

§ 8. Right to privacy

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

“While Arizona’s constitutional provisions generally were intended to incorporate the federal protections [citation omitted], they . . . are specific in preserving the sanctity

of homes and in creating a right of privacy. ... [A]s a matter of state law officers may not make a warrantless entry of a home in the absence of exigent circumstances or other necessity. Such entries are 'per se unlawful' under our state constitution." *State v. Bolt*, 142 Ariz. at 264-65, 689 P.2d at 523-24 [footnote omitted]. Evidence obtained during an unlawful search of a defendant's home may be excluded under the Arizona Constitution, even if it would not be excluded under the Federal Constitution. See *State v. Ault*, 150 Ariz. 459, 466, 724 P.2d 545, 552 (1986) (declining to extend the inevitable discovery rule to an illegal search conducted in the defendant's home because it violated the right to privacy under the Arizona Constitution).